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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,727	03/30/2004	David K. Parker	02453.0032.NPUS00	8780
27194	7590	02/29/2008	EXAMINER	
HOWREY LLP			HO, DUC.CHI	
C/O IP DOCKETING DEPARTMENT			ART UNIT	
2941 FAIRVIEW PARK DRIVE, SUITE 200			PAPER NUMBER	
FALLS CHURCH, VA 22042-2924			2619	
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			02/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/814,727

Applicant(s)

PARKER ET AL.

Examiner

Duc C. Ho

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

1. The disclosure is objected to because of the following informalities: Applicant is requested to replace "Howrey Dkt. No." and "Extreme Dkt. No." with "U.S. application serial number".

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 1, the claimed subject matter "A processor readable medium" is directed toward a software program per se. Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process. In contest, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Applicant is suggested to follow the suggested formats below to avoid a rejection under 35 U.S.C. 101:

Art Unit: 2619

Examples of acceptable language in computer-processing related claims:

- I. "computer readable medium" encoded with _____
 - [a] "a computer program"
 - [b] "software"
 - [c] "computer executable instructions"
 - [d] "instructions capable of being executed by a computer"
- II. "a computer readable medium" _____ "computer program"
 - [a] storing a
 - [b] embodied with a
 - [c] encoded with a
 - [d] having a stored
 - [e] having an encoded

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-26 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is ambiguous. It is unclear as to whether "the command itself" of the limitation "based on or using data derived from a second packet or the command itself", line 10, is referring to the at least one command or another command or not?

Claim 1 is indefinite. It is unclear as to what the intended claiming limitation is by reciting "a second portion representing a location within that layer".

Claim 1 is confusing. The at least one command specifies a packet address for a first packet, then the same "the at least one command" specifies forming or modifying or replacing at least a portion of the first packet,..", since "specifying a packet address" and "modifying or

Art Unit: 2619

replacing at least a portion of the first packet” are two different functions being performed, it is unclear as to “the at least one command” that is mentioned the first time being the same command that is mentioned the second time or not?

Claim 1 is indefinite. Since the limitation “using data derived from a second packet or the command itself” suggests that “a second packet” could be “the command” itself, and since the command specifies a packet address for a first packet, the command itself is not the first packet, it is unclear as to what is the association between the first packet and the second packet?

Allowable subject matter

4. Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, and a rejection under 35 U.S.C. 101, set forth in this Office action.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc Ho whose telephone number is (571) 272-3147. The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Jay Patel, can be reached on (571) 272-2988.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2619

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner

/Duc C Ho/

Primary Examiner, Art Unit 2619

2-24-08